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6 Attorneys for Plaintiff, LILIANA PEREIRA
7 on behalf of the State of California,
8 and others similarly situated and aggrieved

Assigned for all purposes:
Judge Peter Wilson
Dept. CX101

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE**

12 LILIANA PEREIRA, on behalf of the State
of California, and others similarly situated
13 and aggrieved,

14 Plaintiff,

15 v.

16
17 WARMEL MANAGEMENT COMPANY,
a California Corporation; and DOES 1-100,
18 inclusive,

19 Defendants.
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Case No.: 30-2023-01322059-CU-OE-CXC

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, *et*
*seq.***

1
2 Plaintiff, LILIANA PEREIRA (“PLAINTIFF”), an individual on behalf of the State of
3 California, and all other Aggrieved Employees (as defined below), hereby files this Complaint
4 against Defendants WARMEL MANAGEMENT COMPANY, a California Corporation; and
5 DOES 1-100, inclusive, (collectively referred to herein as “DEFENDANTS”). PLAINTIFF is
6 informed and believes and thereon alleges as follows:

7 **INTRODUCTION**

8 1. This is solely a representative action filed by PLAINTIFF on behalf of other
9 Aggrieved Employees and the State of California against DEFENDANTS, pursuant to California’s
10 Private Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties
11 (75% payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
12 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

13 **JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
15 California statutes, including but not limited to the PAGA, and decisional law and regulations.

16 3. Venue is proper in this judicial district and the County of Orange pursuant to
17 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
18 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
19 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
20 in a PAGA action is proper in any county where the defendants committed Labor Code violations
21 against some of its employees).

22 **THE PARTIES**

23 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
24 California and a citizen of the State of California.

25 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
26 PLAINTIFF worked for DEFENDANTS through in or around May 2022 at DEFENDANTS’
27 McDonald’s restaurants located in Buena Park, CA. PLAINTIFF worked in various positions with
28 various duties including but not limited to shift manager duties.

6. Defendant WARMEL MANAGEMENT COMPANY is a California Corporation that, at all relevant times, was authorized to do business within the State of California and is doing business in the State of California.

7. DEFENDANTS own, operate, manage restaurants including but not limited to fast food restaurants operating as McDonald's restaurant(s).

8. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

9. PLAINTIFF is further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

JOINT LIABILITY

10. Under California law, the definition of the terms “to employ” are broadly construed under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3) to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control was to reach situations in which multiple entities control different aspects of the employment

1 relationship. Supervision of the work, in the specific sense of exercising control over how services
2 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
3 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
4 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
5 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
6 California, applying a less stringent standard to what constitutes sufficient control by a business
7 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
8 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
9 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
10 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
11 employment,” *Id.* at 875 [emphasis added].

12 11. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
13 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
14 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
15 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
16 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
17 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
18 and Aggrieved Employees to work for them.

19 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
20 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
21 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
22 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
23 policies and practices regardless of the location(s) where they worked. Among other things,
24 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
25 in DEFENDANTS’ companies, (2) DEFENDANTS utilize common management, who have control
26 over the day-to-day operations and employment matters, including the power to hire and fire, set
27 schedules, issue employee policies, and determine rates of compensation across its locations in
28 California; (3) DEFENDANTS utilize the same policies and procedures for all California

1 employees, including issuing the same employee handbooks and other form agreements; (4)
2 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
3 employment matters; and, (6) DEFENDANTS share employees.

4 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
5 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
6 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
7 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
8 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
9 considered the joint employers of PLAINTIFF and Aggrieved Employees.

10 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
11 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
12 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
13 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
14 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
15 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
16 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
17 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
18 and other Aggrieved Employees' employment with or without cause. Upon information and belief,
19 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
20 writing the details of their compensation, and the manner in which they were to take meal and rest
21 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
22 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
23 collectively would evaluate their wage rates.

24 15. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
25 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
26 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
27 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
28 PLAINTIFF seeks relief in this Complaint.

16. PLAINTIFF is informed and believes that DEFENDANTS exercised the same control over, applied the same policies and practices, and engaged in the same acts and omissions with regard to the other Aggrieved Employees.

17. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF.

18. By reason of their status as joint employers of PLAINTIFF and Aggrieved Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to all Aggrieved Employees.

PAGA ALLEGATIONS

19. PLAINTIFF brings this action under the PAGA, as a representative action solely on behalf of the State of California and all other Aggrieved Employees, regarding violations of the California Labor Code as set forth herein as to all Aggrieved Employees. Said “Aggrieved Employees” include:

All current and former non-exempt employees that worked either directly or via a staffing agency for DEFENDANTS at any location in California at any time from one year plus 65 days from the filing of the initial Complaint through the present (“PAGA Period”).

20. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all other Aggrieved Employees, the civil penalties provided by PAGA solely on behalf of other Aggrieved Employees and the State of California, plus reasonable attorney's fees and costs. PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all other Aggrieved Employees,

1 as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by one or more of
2 the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745,
3 757; *See also Johnson v. Maxim Healthcare Servs.*, (2021) 66 Cal.App.5th 924, 929 - 930. A PAGA
4 plaintiff has authority to seek penalties for all known violations committed by the employer –
5 regardless of whether Plaintiff experienced all violations personally. *Huff*, at 760-761.

6 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

7 21. On February 21, 2023, PLAINTIFF, through counsel, gave written notice by online
8 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
9 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
10 in this Complaint (“PAGA Notice”).

11 22. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
12 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
13 Employees.

14 23. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
15 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
16 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
17 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
18 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit on behalf of other
19 Aggrieved Employees and the State of California against DEFENDANTS has duly accrued.

20 24. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
21 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
22 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

23 **FACTUAL ALLEGATIONS**

24 25. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
25 worked for DEFENDANTS in the State of California. At all times referenced herein,
26 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
27 permitted them to work.

28 26. PLAINTIFF worked for DEFENDANTS as a non-exempt employee from in or

1 around 2001 through in or around May 2022. PLAINTIFF worked for DEFENDANTS at several of
2 DEFENDANTS' restaurants including but not limited to two of DEFENDANTS' McDonald's
3 restaurants located in Buena Park, CA. PLAINTIFF worked in various positions with various duties
4 including but not limited to shift manager duties. PLAINTIFF regularly worked at least eight (8)
5 hours per day, at least (5) days per week. DEFENDANTS paid PLAINTIFF an hourly rate for time
6 counted by DEFENDANTS as hours worked.

7 27. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
8 hourly basis for time counted by DEFENDANTS as hours worked.

9 28. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
10 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
11 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
12 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
13 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
14 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
15 below.

16 29. Based on information and belief, DEFENDANTS implemented a policy and/or
17 practice of rounding meal period start and end times and/or automatically deducting at least thirty
18 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
19 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
20 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
21 PLAINTIFF and Aggrieved Employees of all wages owed.

22 30. Based on information and belief, Aggrieved Employees were not paid for all hours
23 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
24 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
25 the clock work policies and/or practices. For example, at times, PLAINTIFF was required to clock
26 out at the end of her scheduled shift but was required to continue working and/or complete her
27 assigned job duties including but not limited to preparing deposits and/or counting cash register
28 money with the morning shift manager. Such work took at least 20-30 minutes to complete.

1 DEFENDANTS implemented this post shift off-the-clock work policy in order to avoid paying all
2 owed overtime wages to PLAINTIFF and other Aggrieved Employees. This off-the-clock work
3 resulted in record keeping violations, wage statement violations, and unpaid minimum and overtime
4 wages.

5 31. Moreover, based on information and belief, PLAINTIFF and other Aggrieved
6 Employees were not paid for time spent donning and doffing work clothing and/or protective
7 equipment including but not limited to aprons, gloves, and/or other work clothing/equipment
8 required by DEFENDANTS.

9 32. Based on information and belief, DEFENDANTS failed to pay Aggrieved
10 Employees for time they were required to spend completing orientation, policy questionnaires,
11 and/or time spent completing the onboarding process including but not limited to reviewing various
12 documents and policies provided by DEFEDANTS. Based on information and belief, this work time
13 was completed off-the-clock and was not compensated.

14 33. Based in information and belief, DEFENDANTS implemented a time-rounding
15 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
16 compensable time because the time-rounding system implemented by DEFENDANTS would
17 almost always, if not always, result in understating actual compensable work time.

18 34. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
19 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
20 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
21 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
22 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
23 forty (40) hours in a week.

24 35. Based on information and belief, DEFENDANTS had actual and/or constructive
25 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
26 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
27 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
28 of California's minimum and overtime wage laws.

1 36. Based on information and belief, DEFENDANTS failed and continue to fail to pay
2 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
3 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
4 a work week, in violation of California's overtime laws.

5 37. Based on information and belief, DEFENDANTS failed to incorporate all non-
6 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
7 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
8 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
9 wages owed to PLAINTIFF and other Aggrieved Employees.

10 38. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
11 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
12 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
13 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
14 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
15 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
16 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
17 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
18 completely. For example, PLAINTIFF and other Aggrieved Employees were regularly interrupted
19 during their meal periods due to the need to assist customers. Based on information and belief,
20 PLAINTIFF and other Aggrieved Employees were required to remain on DEFENDANTS' premises
21 during purported meal periods in order to assist customers. At times, PLAINTIFF and other
22 Aggrieved Employees clocked out for a meal period, but were required to prepare food and/or take
23 orders during such off-the-clock meal periods when customers came in. On such occasions,
24 Aggrieved Employees performed such work during off-the-clock meal periods. Moreover, at times,
25 DEFENDANTS' restaurants were understaffed, and Aggrieved Employees were required to take
26 late, short, or interrupted meal periods in order to complete their job duties.

27 39. Based on information and belief, other Aggrieved Employees were consistently
28 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods

1 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
2 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
3 expectations.

4 40. Based on information and belief, DEFENDANTS implemented policies and/or
5 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
6 during unpaid meal periods.

7 41. Based on information and belief, DEFENDANTS required Aggrieved Employees to
8 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
9 into account when scheduling meal periods for Aggrieved Employees. Based on information and
10 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

11 42. Based on information and belief, despite DEFENDANTS' failure to provide lawful
12 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
13 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
14 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
15 periods despite having actual and/or constructive knowledge that PLAINTIFF and other Aggrieved
16 Employees did not receive lawful meal periods.

17 43. Moreover, based on information and belief, Aggrieved Employees who worked shifts
18 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.

19 44. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
20 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
21 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
22 did DEFENDANTS have any sort of compliant policy in practice.

23 45. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
24 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
25 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
26 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
27 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
28 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

1 46. Based on information and belief, DEFENDANTS had actual and/or constructive
2 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
3 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
4 violation of California's meal period laws.

5 47. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
6 additional hour of wages at their respective regular rates of compensation for each workday a lawful
7 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
8 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
9 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
10 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
11 compensation for purposes of calculating the owed meal period premium.

12 48. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
13 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
14 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
15 middle of the work period, as required by law.

16 49. PLAINTIFF and other Aggrieved Employees were not adequately informed,
17 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
18 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
19 the taking or timing of duty-free rest periods.

20 50. Based on information and belief, DEFENDANTS did not have a have a compliant
21 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
22 practice. For example, PLAINTIFF and other Aggrieved Employees were regularly interrupted
23 during their rest periods due to the need to assist customers. Based on information and belief,
24 PLAINTIFF and other Aggrieved Employees were required to remain on DEFENDANTS' premises
25 during purported rest periods in order to assist customers. Moreover, at times, DEFENDANTS'
26 restaurants were understaffed, and Aggrieved Employees were required to take late, short, or
27 interrupted rest periods or skip rest periods completely in order to complete their job duties.

28 51. Based on information and belief, any purported rest periods were interrupted, cut

1 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
2 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
3 completely and/or take non-compliant rest periods.

4 52. Moreover, based on information and belief, DEFENDANTS failed to provide any
5 form of a third rest period on shifts lasting longer than ten hours.

6 53. Based on information and belief, DEFENDANTS implemented policies and/or
7 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
8 DEFENDANTS' control during rest periods.

9 54. Based on information and belief, Aggrieved Employees were pressured to complete
10 their work duties according to a designated schedule such that rest periods were only taken once
11 tasks were completed, and/or as time permitted.

12 55. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
13 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
14 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
15 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
16 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
17 shift differential pay, and/or other non-discretionary compensation into the regular rate of
18 compensation for purposes of calculating the owed rest period premium.

19 56. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
20 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
21 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
22 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
23 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
24 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
25 applicable hourly rates in effect during the pay period and the corresponding number of hours
26 worked at each hourly rate by the employee.

27 57. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
28 Employees that also failed to indicate the earned gross and net wages earned during the pay period,

1 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
2 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
3 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
4 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
5 other off-the-clock work policies and practices described above) which results in a violation of
6 Labor Code section 226(a).

7 58. Based on information and belief, wage statements issued by DEFENDANTS failed
8 to list all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
10 Code section 226(a)(9).

11 59. Moreover, based on information and belief, DEFENDANTS issued wage statements
12 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
13 other things, failing to list the correct name and/or address of the legal entity that is the employer,
14 in violation of Labor Code section 226(a)(8).

15 60. Based on information and belief, wage statements issued by DEFENDANTS failed
16 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid.

17 61. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
18 not include all of the statutorily required information, including but not limited to, the correct name
19 and/or address of the legal entity that is the employer.

20 62. Based on further information and belief, DEFENDANTS issued wage statements to
21 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
22 wages were paid in violation of Labor Code section 226.

23 63. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
24 Employees that were not accurate and did not include all of the statutorily required information. As
25 such, DEFENDANTS violated Labor Code section 226.

26 64. **Failure to Produce Employment Records.** Based on information and belief,
27 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
28 or former employee's time, pay, and/or personnel records when requested pursuant to Labor Code

1 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF sent a
2 written request for payroll and personnel records to DEFENDANTS. Yet, DEFENDANTS failed to
3 timely produce complete records, including but not limited to time and pay records within the time
4 periods delineated by California labor law. Based on information and belief, DEFENDANTS failed
5 and continues to fail to timely produce complete payroll and personnel records when requested by
6 other Aggrieved Employees. Based on information and belief, DEFENDANTS failed and continue
7 to fail to timely produce complete time, pay, and personnel records when requested by other
8 Aggrieved Employees.

9 **65. Inaccurate Records.** Based on the above-described unlawful policies and practices,
10 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
11 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
12 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
13 required by law, including but not limited to the following records: total daily hours worked,
14 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
15 began and ended each work period, time records of meal periods, and accurate itemized wage
16 statements.

17 **66.** DEFENDANTS have failed and continue to fail to keep accurate and complete
18 records showing total hours worked by virtue of DEFENDANTS' time rounding, automatic meal
19 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
20 employer control during unpaid meal periods, failure to record the true start and end times of meal
21 periods, shift start times and shift end times, and other off-the-clock work policies and practices
22 described herein.

23 **67. Unreimbursed Business Expenses.** Based on information and belief,
24 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
25 as a direct consequence of the performance of their job duties without providing reimbursement, in
26 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
27 Aggrieved Employees were improperly required to provide and maintain work tools that are
28 supposed to be the responsibility of the employer.

1 68. Based on information and belief, DEFENDANTS shifted the costs of doing business
2 onto Aggrieved Employees by requiring them to pay for business expenses including but not limited
3 to uniforms, aprons, and/or the use of Aggrieved Employees' personal mobile phone and data usage
4 for work related purposes including but not limited to receiving and responding to work related
5 messages and/or phone calls and/or for purposes of downloading a payroll/timekeeping application.

6 69. Based on information and belief, DEFENDANTS regularly failed to reimburse and
7 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
8 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
9 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
10 assigned by DEFENDANTS.

11 70. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
12 for all reasonable expenses associated with carrying out their duties required that Aggrieved
13 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
14 2802.

15 71. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
16 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
17 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
18 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
19 accrued sick leave hours on the correct number of hours worked (as a result of the
20 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
21 times/other required off-the-clock work including but not limited to unpaid meal periods) and by
22 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
23 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
24 compensation into the sick leave pay rate calculation.

25 72. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
26 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
27 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
28 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to

1 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
2 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
3 used sick leave and the balance of paid sick leave.

4 73. Based on information and belief, throughout the relevant time period,
5 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
6 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
7 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
8 prior to their respective separations, for as on several occasions thereafter, he or she would have
9 been entitled to use the banked sick leave and earn appropriate compensation.

10 74. Upon information and belief, DEFENDANTS failed and continue to fail to comply
11 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
12 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
13 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
14 wages.

15 75. As such, DEFENDANTS have violated California's paid sick leave laws and
16 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
17 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
18 unlawful practices and policies violate Labor Code sections 245-248.5.

19 76. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
20 that all employers with 26 or more employees are required to provide up to 80 hours for covered
21 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care
22 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
23 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
24 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
25 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

26 77. **Seating Violations.** Per section 14(A-B) of all applicable IWC Wage Orders,
27 employees shall be provided with suitable seats when the nature of the work reasonably permits the
28 use of seats and when they are not actively engaged in the work duties that would not permit them

1 to be seated.

2 78. All applicable IWC Wage Orders, Section 14(A-B) provides:

3 (A) All working employees shall be provided with suitable seats when the nature of the
4 work reasonably permits the use of seats.

5 (B) When employees are not engaged in the active duties of their employment and the
6 nature of the work requires standing, an adequate number of suitable seats shall be placed in
7 reasonable proximity to the work area and employees shall be permitted to use such seats when it
8 does not interfere with the performance of their duties.

9 79. Suitable seating is one of the worker protections covered by California's Wage
10 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
11 construed to effectuate the goal of protecting the comfort and welfare of employees. Brinker
12 Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1027 (2012).

13 80. Based on information and belief, DEFENDANTS failed to provide Aggrieved
14 Employees with suitable seating, and when such employees were not engaged in duties which
15 required them to stand, no seating was placed in reasonable proximity to their workstations.

16 81. DEFENDANTS' Aggrieved Employees worked in various positions including but
17 not limited to cashiers and cooks. Based on information and belief, the nature of the work reasonably
18 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
19 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
20 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
21 of seats would not interfere with the performance of their duties.

22 82. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
23 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
24 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
25 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
26 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

27 83. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
28 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that

1 were due and owing upon termination or resignation. Based on information and belief,
2 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
3 requirements of Labor Code sections 201-202.

4 84. Upon separation of employment, Aggrieved Employees' final paychecks were not
5 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
6 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
7 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
8 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
9 accrued rates.

10 85. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

11 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

12 86. Based on information and belief, DEFENDANTS required Aggrieved Employees to
13 agree in writing to unlawful conditions of employment including but not limited to unlawful
14 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
15 violation of Labor Code section 432.5.

16 87. Based on information and belief, DEFENDANTS ordered unlawful financial credit
17 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved
18 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
19 employment, in violation of California and Federal law, which results in a further violation of Labor
20 Code section 432.5.

21 88. Based on information and belief, DEFENDANTS also required Aggrieved
22 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
23 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
24 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
25 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
26 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
27 FCRA when conducting background screenings for applicants, including but not limited to
28 Aggrieved Employees that were subject to a background check as a condition of employment during

1 the application phase.

2 89. Based on information and belief, DEFENDANTS required Aggrieved Employees to
3 agree in writing to a background check which failed to abide by the requirements set forth in CA
4 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
5 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
6 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
7 the background check, failing to provide a summary of rights under the ICRAA and/or the FRCA,
8 failing to provide a way by which the individual could request a copy of the report, failing to disclose
9 the name, address, and telephone number of the third party preparing the report, and failing to
10 properly obtain authorization or consent to such a background check, and thus was an unlawful
11 background check.

12 90. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
13 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
14 section 432.5.

15 91. Based on further information and belief, DEFENDANTS also required Aggrieved
16 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
17 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
18 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
19 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

20 92. Based on further information and belief, DEFENDANTS knew that requiring
21 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
22 condition of obtaining and/or holding employment was unlawful.

23 93. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
24 condition of employment, DEFENDANTS violated Labor Code section 432.5.

25 Unlawful Inquires into Criminal History

26 94. Labor Code section 432.7 prohibits an employer from asking applicants about past
27 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
28 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in

1 convictions on its employment application, in violation of California law.

2 95. Upon information and belief, DEFENDANTS, in violation of California law,
3 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
4 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
5 employment and/or otherwise impermissibly inquired into criminal history on its employment
6 application in violation of California law, and in violation of Labor code section 432.5.

7 96. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
8 engaged in these same herein described unlawful practices, which led to violations of the California
9 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
10 unlawful practices to all of its employees that it applied to PLAINTIFF.

11 **FIRST CAUSE OF ACTION**
12 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
13 **2698, *ET SEQ.***
14 **(On behalf of other Aggrieved Employees and the State of California against all Defendants)**

15 97. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

16 98. PLAINTIFF brings this cause of action as a representative action solely on behalf of
17 other Aggrieved Employees and the State of California.

18 **Failure to Keep Accurate Records**

19 99. California Labor Code § 1174 requires employers to keep “accurate and complete”
20 payroll records showing, among other things, the hours worked daily by all non-exempt employees.
21 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
22 times during which all owed meal periods were provided each day.

23 100. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
24 and complete records as required by law, including but not limited to the following records: total
25 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
26 Aggrieved Employees began and ended each work period, time records of meal periods, and
27 accurate itemized wage statements.

28 101. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all

1 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
2 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
3 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
4 period during which the referenced statutes and Wage Order provisions were violated.¹

5 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

6 102. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
7 Orders, section 7 require that employers keep the following information on file for each employee
8 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
9 and the corresponding number of hours worked by the employee at each hourly rate, when the
10 employee begins and ends each work period (including meal periods) and split intervals; total hours
11 worked by the employee; all deductions; gross wages earned; and net wages earned.

12 103. Section (b) of Labor Code section 226 further requires employers to "afford current
13 and former employees the right to inspect or receive a copy of records pertaining to their
14 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
15 provides that, "an employer who receives a written or oral request to inspect or receive a copy of
16 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
17 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
18 violation of this subdivision is an infraction." An employer's failure to comply within this timeframe
19 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
20 the employer. Lab. Code section 226(f).

21 104. Personnel Records. In addition to their right to time and pay records, employees, and
22 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
23 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
24 section 432 further specifies that employers must furnish copies of all employment records bearing

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 the employee's signature. Labor Code section 1198.5 also requires that the file be made available
2 for inspection or receipt within a "reasonable" amount of time, but "not later than 30 calendar days
3 from the date the employer receives a written request." An employer's failure to comply within this
4 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
5 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

6 105. Based on information and belief, DEFENDANTS fail to timely produce or make
7 available Aggrieved Employees' personnel records and/or payroll records when requested pursuant
8 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
9 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

10 **Meal Period Violations**

11 106. California law requires employers to provide employees a duty-free, uninterrupted
12 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
13 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
14 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
15 *Court* (2012) 53 Cal.4th 1004.

16 107. Employers must also provide employees with a second duty-free, uninterrupted thirty
17 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
18 be provided before the end of the 10th hour of work. *Ibid.*

19 108. Employers covered by any and all applicable IWC Wage Orders have an obligation
20 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
21 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
22 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
23 ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
24 section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a
25 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
26 provided").

27 109. Employers must pay employees an additional hour of wages at the employees'
28 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted

1 meal period, first meal period provided after five (5) hours, second meal period provided after 10
2 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
3 provide an employee a meal period in accordance with the applicable provision of this Order, the
4 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
5 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

6 110. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
7 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
8 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
9 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
10 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
11 periods completely.

12 111. Based on information and belief, DEFENDANTS had and continue to have a policy
13 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
14 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
15 Aggrieved Employees did not receive compliant meal periods.

16 112. Moreover, based on information and belief, Aggrieved Employees did not receive a
17 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

18 113. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
19 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and
20 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
21 violation of California's meal period laws.

22 114. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
23 periods in violation of California law and/or failed to pay the proper meal period premium for failure
24 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
25 differential pay and/or other non-discretionary compensation into the regular rate or compensation
26 for purposes of calculating the owed meal period premium.

27 115. These unlawful meal period policies and practices result in violations of Labor Code
28 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject

1 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
2 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
3 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

4 **Rest Period Violations**

5 116. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
6 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
7 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
8 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
9 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
10 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
11 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
12 1029). The rest period requirement obligates employers to permit and authorize employees to take
13 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
14 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
15 257. If the employer fails to provide any required rest period, the employer must pay the employee
16 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
17 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
18 applicable IWC Wage Order, §12(B).

19 117. Moreover, under California law rest periods must be a “net” ten minutes in a suitable
20 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
21 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
22 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
23 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
24 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
25 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
26 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
27 “onus is on the employer to clearly communicate the authorization and permission [to take rest
28 periods] to its employees.”).

1 118. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
2 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
3 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
4 to DEFENDANTS' control due to the nature and constraints of Aggrieved Employees' job duties,
5 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
6 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

7 119. Based on information and belief, DEFENDANTS implemented policies and/or
8 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
9 employer control during rest periods. Based on further information and belief, Aggrieved
10 Employees were pressured to complete their work duties according to a designated schedule such
11 that rest periods were only taken once tasks were completed, and/or as time permitted.

12 120. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant
13 first, second, or third rest periods as required by California law.

14 121. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
15 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
16 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
17 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
18 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
19 the regular rate of compensation for purposes of determining the owed rest period premium.

20 122. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
21 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
22 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

23 **Minimum and Overtime Wage Violations**

24 123. California law provides that employees in California must be paid for all hours
25 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
26 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
27 The minimum wage standard applies to each hour employees worked for which they were not paid.
28 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful

1 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
2 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

3 124. California law also provides that employees in California must be paid overtime,
4 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
5 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
6 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
7 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
8 consecutive day of work in a work week. *Ibid.*

9 125. As explained above, DEFENDANTS violated California's minimum and overtime
10 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
11 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
12 start and end times and meal period start and end times), payment according to scheduled hours
13 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
14 meal periods, and/or other otherwise off-the-clock work (described above), and/or other unlawful
15 policies and/or practices described above which resulted in unpaid minimum and overtime wages.

16 126. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
17 Aggrieved Employees for all hours worked.

18 127. Based on information and belief, DEFENDANTS had actual or constructive
19 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for
20 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
21 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
22 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
23 Employees.

24 128. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
25 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
26 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
27 violation of California's overtime laws.

28 129. Based on information and belief, DEFENDANTS further violated California's

1 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
2 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
3 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
4 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
5 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
6 other Aggrieved Employees.

7 130. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
8 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
9 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
10 Wage Orders, section 20.

11 **Statutory Wage Violations**

12 131. California Labor Code section 223 makes it unlawful for an employer to secretly pay
13 wages lower than required by statute while purporting to pay legal wages. As described above,
14 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
15 earned minimum and overtime compensation for all hours worked which resulted in the payment of
16 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
17 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
18 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
19 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and
20 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
21 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
22 Labor Code § 2699(f)-(g).

23 **Refusal to Make Payment**

24 132. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
25 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
26 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
27 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
28 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*

1 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
2 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
3 each Aggrieved Employee, for each pay period during which the statute provisions were violated.²

4 **Standard Conditions of Labor Violations**

5 133. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
6 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
7 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
8 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
9 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
10 minimum/overtime wages and other violations described herein result in separate violations of
11 sections 1198 and 1199, which subject DEFENDANTS to civil penalties under Labor Code sections
12 1197.1 and 2699.

13 **Business Expense Violations**

14 134. California law requires employers to indemnify their employees for all necessary
15 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
16 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
17 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
18 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
19 incurred by the employee enforcing the rights granted by this section."

20 135. Among other things, under California law, when employees must use their personal
21 cellphones for work-related purposes, the employer must reimburse them for a reasonable
22 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
23 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
24 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
25 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile

26
27 ² Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
2 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

3 136. Further, “any contract or agreement, express or implied, made by any employee to
4 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
5 any employee or his personal representative of any right or remedy to which he is entitled to under
6 the laws of this State.” *See* Cal. Lab. Code section 2804.

7 137. As described above, PLAINTIFF and the Aggrieved Employees were improperly
8 required to pay for business expenses that are legally the responsibility of the employer.

9 138. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
10 full reimbursement for all reasonable expenses associated with carrying out their duties required
11 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
12 expenses in violation of Labor Code section 2802.

13 139. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and other Aggrieved
14 Employees have suffered injury in that they were not completely reimbursed as mandated by
15 California law.

16 140. DEFENDANTS’ failure to provide PLAINTIFF and the Aggrieved Employees with
17 full reimbursement for all reasonable expenses associated with carrying out their duties required
18 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
19 expenses in violation of Labor Code section 2802.

20 141. As a result of DEFENDANTS’ unlawful conduct, PLAINTIFF and the Aggrieved
21 Employees have suffered injury in that they were not completely reimbursed as mandated by
22 California law.

23 142. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
24 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
25 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
26 Code § 2802 and the applicable Wage Order.

27 **Wage Statement Violations**

28 143. California law requires every employer semi-monthly or at the time of each payment

1 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
2 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
3 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
5 is paid; (7) the name of the employee and only the last four digits of his or her social security number
6 or an employee identification number other than a social security number; (8) the name and address
7 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

9 144. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
10 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
11 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
12 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
13 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
14 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
15 effect during the pay period and the corresponding number of hours worked at each hourly rate by
16 the employee, in violation of Labor Code section 226(a)(9).

17 145. Moreover, due to violations detailed above, including but not limited to,
18 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
19 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
20 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish
21 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
22 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
23 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
24 compensation earned during the pay period into the regular rate of pay for purposes of calculating
25 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
26 overtime worked by PLAINTIFF and other Aggrieved Employees.

27 146. As explained above, wage statements issued by DEFENDANTS failed to list the
28 "total hours worked" by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,

1 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
3 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
4 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
5 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

6 147. Based on information and belief, wage statements issued by DEFENDANTS failed
7 to list all applicable hourly rates in effect during the pay period and the corresponding number of
8 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
9 Code section 226(a)(9).

10 148. Separately, and independent from the above allegations, based on information and
11 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
12 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
13 entity that is the employer.

14 149. Based on information and belief, wage statements issued by DEFENDANTS failed
15 to list the inclusive dates of the pay period for which the Class Member is being paid.

16 150. DEFENDANTS' failure to accurately list all hours worked on all wage statements
17 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
18 Employees over whether they received all wages owed to them.

19 151. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
20 they could not easily determine whether they received all wages owed to them and whether they
21 were paid for all hours worked.

22 152. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
23 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
24 injury as they could not contact their employer regarding any question(s) they had about wages paid.

25 153. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
26 Aggrieved Employees with accurate, itemized wage statements.

27 154. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
28 Employees have suffered injury. The absence of accurate information on their wage statements has

1 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
2 mathematical computations to determine the amount of wages owed, and will cause difficulty and
3 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
4 submission of inaccurate information about wages and amounts deducted from wages to state and
5 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
6 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
7 and pay records than if DEFENDANT had complied with its legal obligations.

8 155. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
9 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
10 during which the statute provisions were violated. ³

11 **Seating Violations**

12 156. Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be
13 provided with suitable seats when the nature of the work reasonably permits the use of seats and
14 when they are not actively engaged in the work duties that would not permit them to be seated.

15 157. All applicable IWC Wage Orders, Section 14(A-B) provides:

16 (A) All working employees shall be provided with suitable seats when the nature of the
17 work reasonably permits the use of seats.

18 (B) When employees are not engaged in the active duties of their employment and the
19 nature of the work requires standing, an adequate number of suitable seats shall be placed in
20 reasonable proximity to the work area and employees shall be permitted to use such seats when it
21 does not interfere with the performance of their duties.

22 158. Suitable seating is one of the worker protections covered by California's Wage
23 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
24 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
25 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

26 159. Based on information and belief, DEFENDANTS failed to provide PLAINTIFF and
27 other Aggrieved Employees with suitable seating, and when such employees were not engaged in

28 ³ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 duties which required them to stand, no seating was placed in reasonable proximity to their
2 workstations.

3 160. Moreover, based on information and belief, the nature of the work reasonably
4 permitted the use of seats for at least part of the time that Aggrieved Employees were working.
5 Lastly, there were periods of time when Aggrieved Employees were not engaged in active duties of
6 their employment, yet there were no suitable seats in reasonable proximity to the work area and use
7 of seats would not interfere with the performance of their duties.

8 161. The Aggrieved Employees worked in various positions. The nature of PLAINTIFF's
9 and other Aggrieved Employees' work reasonably permitted the use of seats. However,
10 DEFENDANTS failed to provide suitable seating in reasonable proximity to Aggrieved Employees'
11 work areas in violation of section 14(A-B) of all applicable Wage Orders, and Labor Code sections
12 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code sections 1199 and
13 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each
14 Aggrieved Employee, results in a separate civil penalty.

15 **Sick Leave Violations**

16 162. DEFENDANTS violated California's paid sick leave laws including, Labor Code
17 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
18 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
19 DEFENDANTS' failure to account for actual hours worked (as explained above), and/or failure to
20 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
21 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
22 compensation into the sick leave pay rate calculation.

23 163. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
24 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
25 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
26 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
27 Aggrieved Employees' intelligent exercise of their paid sick leave.

28 164. But for this failure, PLAINTIFF and other Aggrieved Employees would have used

1 their paid sick leave at least prior to their respective separations, for as on several occasions
2 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
3 compensation.

4 165. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
5 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
6 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
7 were entitled to the maximum number of hours accruable.

8 166. Upon information and belief, DEFENDANTS failed and continue to fail to comply
9 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
10 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
11 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
12 wages.

13 167. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

14 168. On information and belief, PLAINTIFF alleges that all of these practices were
15 experienced and continue to be experienced by other Aggrieved Employees.

16 169. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
17 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
18 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

19 **Failure To Provide Supplemental Paid Sick Leave**

20 170. Labor Code § 248.2 provides that all employers with 26 or more employees are
21 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
22 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
23 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
24 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
25 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
26 Labor Code section 248.6.

27 **Failure to Pay Vested Vacation/Paid Time Off**

28 171. California Labor Code section 227.3 provides that when an employer policy provides

1 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
2 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
3 employee's final rate in accordance with such contract of employment or employer policy respecting
4 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
5 off upon termination.

6 172. Based on information and belief, DEFENDANTS had and continue to have a
7 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
8 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
9 to Aggrieved Employees upon separation of employment, in violation of California law, including
10 but not limited to, Labor Code section 227.3.

11 **Untimely Payment of Final Wages**

12 173. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
13 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
14 payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an
15 employee not having a written contract for a definite period quits his or her employment, his or her
16 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
17 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
18 to his or her wages at the time of quitting."

19 174. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
20 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
21 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
22 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
23 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
24 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

25 175. Based in information and belief, DEFENDANTS failed and continue to fail to timely
26 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
27 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
28 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not

1 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
2 sick leave and/or paid time off wages at the properly accrued rates.

3 176. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
4 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
5 256.

6 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

7 177. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
8 require any employee or applicant for employment to agree, in writing, to any term or condition
9 which is known by such employer...to be prohibited by law.” DEFENDANTS required and
10 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
11 conditions of employment including but not limited to unlawful criminal and/or financial checks as
12 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

13 178. The California Labor Code places certain procedural and substantive limits on an
14 employers’ ability to conduct employee background checks and on how employers can use the
15 information they obtain through those background checks. Labor Code section 1024.5 states that
16 employers, except for financial institutions, may order a credit check only if the individual works
17 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
18 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
19 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
20 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
21 background check, including but not limited to identifying an appropriate reason for the background
22 check, a separate consent form with required disclosures and certain formatting requirements,
23 additional forms such as a summary of rights, a way by which to request a copy of the report, as
24 well as proper notice of adverse actions taken, among other statutory requirements.

25 179. Based on information and belief, DEFENDANTS ordered unlawful financial credit
26 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
27 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
28 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

1 180. Based on information and belief, DEFENDANTS required Aggrieved Employees to
2 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
3 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

4 181. Based on further information and belief, DEFENDANTS required Aggrieved
5 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
6 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
7 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
8 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

9 182. Based on further information and belief, DEFENDANTS knew that requiring
10 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
11 condition of obtaining and/or holding employment was unlawful.

12 183. By requiring that Aggrieved Employees sign off on the illegal background and/or
13 financial checks, DEFENDANTS violated Labor Code section 432.5.

14 Unlawful Inquires into Criminal History

15 184. Labor Code section 432.7 prohibits an employer from asking applicants about past
16 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
17 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
18 convictions on its employment application, in violation of California law.

19 185. Upon information and belief, DEFENDANTS, in violation of California law,
20 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
21 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
22 employment and/or otherwise impermissibly inquired into criminal history on its employment
23 application in violation of California law.

24 186. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
25 Code section 432.7. By asking about convictions at the application phase or prior to extending an
26 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
27 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
28 disclose arrests and/or convictions as a condition of employment.

1 187. Under the provisions of PAGA and the above mentioned Labor Code sections,
2 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
3 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
4 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
5 interpretations of these laws by California Courts and administrative bodies, as well as any other
6 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 7 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
8 relevant California Labor Code provisions listed herein only if permitted by the
9 PAGA statute, pursuant to Labor Code section 2699(a); and
10 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
11 violations without a civil penalty recoverable under the PAGA, all in the default
12 amounts provided by Labor Code section 2699(f).
13 c. The proper measure of penalties under PAGA is the number of violations,
14 whether those violations were committed as against PLAINTIFF or any
15 Aggrieved Employee, whether a party to this action or not.

16 188. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
17 PLAINTIFF is entitled to recover civil penalties on behalf of other Aggrieved Employees and the
18 State of California, costs, and attorney's fees.

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2 **PRAYER FOR RELIEF**

3 WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of the State
4 of California, and all other Aggrieved Employees:

- 5 1. For civil penalties under Labor Code Section 2699 (75% payable to the
6 LWDA and 25% payable to Aggrieved Employees);
7 2. For an order temporarily, preliminarily and permanently enjoining and
8 restraining DEFENDANTS from engaging in similar unlawful conduct as set
9 forth herein;
10 3. For reasonable attorney's fees and costs of suit; and
11 4. For such other and further relief that the Court deems just and proper.
12

13 Dated: April 28, 2023

CROSNER LEGAL, PC

14
15 By: _____



16 Zachary M. Crosner, Esq.
17 Jamie Serb, Esq.
18 Attorneys for Plaintiff
19 LILIANA PEREIRA
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